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SIPDIS

E.O. 12958: N/A

TAGS: [BEXP](#) [XXX](#)

SUBJECT: QUESTIONNAIRE ON DUTIES/TAXES AND CUSTOMS  
PROCEDURES FOR INFORMATION TECHNOLOGY PRODUCTS AND  
ELECTRONIC COMMERCE TRANSACTIONS

To be able to answer the questionnaire cited in the cable, Post has sent SCO's letters dated Thursday, February 13, 2003, to the Vietnamese State agencies, including Ministry of Trade, General Department of Vietnam Customs, and General Department of Taxation of Vietnam, requesting their cooperation in answering the questionnaire. Post has continuously followed up and urged them to reply, but to date, there is no official response from these Vietnamese relevant Government agencies. Consequently, answers in this cable is done basing on the best of knowledge of industry specialist through business practice, unofficial interviews with some contacts at the relevant Government agencies, including General Department of Taxation of Vietnam, General Department of Customs of Vietnam, Ministry of Trade, Ministry of Post and Telematics, Ministry of Public Security, Ministry of Labor, Invalids, and Social Affairs, and several Vietnamese and U.S. information technology companies operating in Vietnam. Should any questions on these issues herein be arised, Post will continue to update and/or further clarify.

[1](#)I. QUESTIONS ON SOFTWARE / RELATED SERVICES IMPORTS

[1](#)A. ARE DUTIES AND TAXES ASSESSED ON THE INTELLECTUAL PROPERTY OF THE SOFTWARE OR ON THE MEDIUM ON WHICH IT IS PRESENTED? IS CUSTOMIZED SOFTWARE TREATED DIFFERENTLY THAN PACKAGED SOFTWARE?

Duties and taxes are assessed under HS code list (e.g. newspapers, magazines, books, documents, etc., in tapes, CD-ROM, VCD, DVD, etc.), which includes the intellectual property element. So far, there are no legal documents in Vietnam mentioning the distinction of customized and packaged software.

[1](#)B. WHAT ARE THE CUSTOMS' DUTIES AND TAX IMPLICATIONS FOR SOFTWARE SOLD WITH UPDATES WHERE THE FULL SALES PRICE, INCLUDING COST OF UPDATES, IS SHOWN ON THE ORIGINAL COMMERCIAL INVOICE? ARE DUTIES/TAXES PAID ON THAT AMOUNT? WHAT HAPPENS WHEN THE UPDATES ARE SENT AT A LATER DATE? ARE DUTIES/TAXES APPLIED AGAIN? IF SO, BASED ON WHAT VALUE? HOW SHOULD INFORMATION BE PRESENTED ON THE COMMERCIAL INVOICE FOR THE ORIGINAL AND SUBSEQUENT SHIPMENTS TO AVOID PAYING DUTIES/TAXES MORE THAN ONCE ON A SINGLE SALE?

So far, Vietnam's current laws and regulations are not precise and there's no guidance on this particular issue. As a matter of fact, Vietnam leaves this type of products open, i.e. software is subject to duty-free. Tax is only levied on the physical value of imported diskette/CD-ROM (i.e. the medium containing software). (E.g. a \$US3 CD contains a software valued at thousands of USD, tax is levied based on the \$US3 value of the diskette/CD-ROM.) Vietnam Customs has been studying Article 7 of General Agreement on Tariffs and Trade (GATT) regarding definition of value to be taxed under the international general rules to apply in this year of [1](#)2003. At present, in case of imported software is declared according to its value shown in sales contract and commercial invoice, Vietnam Customs considers the regular papers and accepts them as basis to tax. There's no clear and precise distinction between initial software shipment and its update, so double taxation might be occurred in this case. To avoid such a problem, the value of the software should be clearly declared and stated.

[1](#)C. ARE SOFTWARE LICENSES CLASSIFIED IN HARMONIZED SYSTEM 4907? ARE IMPORT DUTIES/TAXES APPLIED? IF YES, ON WHAT COST/PRICE BASE ARE THEY LEVIED? ARE WITHHOLDING OR OTHER ADDITIONAL TAXES APPLIED ON SOFTWARE LICENSES? IF YES, HOW ARE THE TAXES APPLIED?HS 4907 does seem not appropriate for this case because such a HS code is not related to software, but is related to Unused Postage, Check Forms, Banknotes, Stock, etc. Please check on this. Answer to this question is the same as the one to the above question, Vietnam is not ready for this matter. There's no regulation stated in one official document regarding this issue. In fact, the Vietnamese relevant agencies solve incurred problems on a case by case according to their experience and precedent.

1D. IF A U.S. LICENSE AGREEMENT IS INCLUDED IN THE PACKAGING OR IS PART OF THE INSTALLATION/REGISTRATION OF SHRINK WRAPPED SOFTWARE IMPORTED FROM THE U.S., WOULD THAT AGREEMENT BE BINDING ON CONSUMERS IN YOUR MARKET? IF SO, WOULD U.S. OR LOCAL LAWS PERTAIN? [DEFINITION OF SHRINK WRAPPED SOFTWARE: SHRINK WRAPPED SOFTWARE IS SOFTWARE THAT IS PACKAGED WITH A TERMS AND CONDITIONS STATEMENT, READY FOR INSTALLATION BY THE PURCHASER. This issue is quite new to Vietnam. Answer is the same as the above one.

1E. ARE SERVICES (I.E. TRAINING, SET-UP, ETC) RELATING TO THE SALE OF SOFTWARE TAXED? IF SO, AT WHAT RATE AND BASED ON WHAT VALUE? (1) ARE US INFORMATION TECHNOLOGY SOLUTION PROVIDERS PERMITTED TO SEND PERSONNEL INTO THE COUNTRY TO SET UP HARDWARE / SOFTWARE RELATED SYSTEMS? (2) ARE SPECIAL VISAS / WORK PERMITS AND / OR PROFESSIONAL CERTIFICATION BY AN ACCREDITED BODY REQUIRED?

No VAT and no import duties are applicable to the said services, but personal income tax and corporate income tax is. Customs procedures are not quite clear thus far. (1) U.S. IT solution providers are permitted to send personnel into Vietnam for such a purpose. In general, foreign workers entering Vietnam must have entry visa issued by Vietnam's Ministry of Public Security. (2) However, it should be noted that personnel sent to Vietnam for short term entrance must be invited by a Vietnamese legal entity that is licensed to operate in the IT and/or telecom industry, and the person coming to Vietnam for a long term must apply for registration and work permit issued by Vietnam's Ministry of Public Security and Ministry of Labors, Invalids, and Social Affairs.

1F. ARE IMPORT TAXES (VAT, ETC) APPLIED TO SOFTWARE DELIVERED TO THE END-USER OVER THE INTERNET? IF SO, ARE THE TAXES ASSESSED ON THE INTELLECTUAL VALUE OF THE PROPERTY? WOULD THE SITUATION BE DIFFERENT IF THIS SOFTWARE WERE INSTEAD DELIVERED TO A DISTRIBUTOR WHO HAS A LICENSE TO PRODUCE (REPLICATE) AND SELL THE SOFTWARE?

Until now, this issue is still out of control of Vietnam's management ability.

1G. IS POST AWARE OF ANY LAWS OR EFFORTS TO REGULATE VOICE OVER INTERNET PROTOCOL (VOIP) SERVICES IN YOUR COUNTRY? (PLEASE NAME THE SPECIFIC LAW, GOVERNMENT AGENCY(IES) WITH JURISDICTION, AND CONTACT INFORMATION)

All telecommunications services in Vietnam, including the services using VoIP technology, is regulated by Ordinance on Post and Telecommunications No. 43/2002/PL-UBTVQH10 dated May 25, 2002, promulgated by Vietnam's National Assembly. However, until now, there's not yet under-law documents regulating the VoIP technology-based services is issued. The Ordinance is passed by the National Assembly, but it is drafted and monitored by the Ministry of Post and Telematics (MPT) Contact Information: Ministry of Post and Telematics of Vietnam, 18 Nguyen Du Street, Hanoi, Vietnam. Tel: (84-4) 826-3576; Fax: (84-4) 943-6607

## II. QUESTIONS ON CUSTOMS PROCEDURES RELATED TO IT PRODUCTS

1A. WHAT ARE THE DOCUMENTATION REQUIREMENTS FOR THE PHYSICAL IMPORT OF SOFTWARE? FOR OTHER INFORMATION TECHNOLOGY PRODUCTS?

According to Vietnam's Law on Customs dated June 29, 2001, and relevant guidance legal documents, customs papers required for imported goods basically include customs declaration paper, sales contract, commercial invoice, goods packaging bills, certificate of origin, etc. The Certificate of Origin (C/O) is still a problem here. This certificate is issued in many countries by government agencies or chamber of commerce and industry, but is not applicable in the U.S. Neither the U.S. Government nor U.S. Chamber of Commerce issues this type of papers. Many U.S. companies and their Vietnamese business partners face this problem with Vietnam's Customs offices. The Vietnamese authorities are expecting some U.S. government agency to officially announce this matter of fact so that they can inform the local customs offices not to require such C/O to U.S. exports. Besides, in terms of IT imported products, it is required to show "Certificate of Standard Compliance" issued by Vietnam's Ministry of Post and Telematics. Contents of some software relevant to cultural and sensitive information must be checked and vetted by

Vietnam's Ministry of Culture and Information.

**B. WHAT ARE THE DOCUMENTATION REQUIREMENTS FOR THE ELECTRONICALLY DELIVERED IMPORT OF DIGITIZED PRODUCTS OVER THE INTERNET OR OTHER NETWORKS (I.E. SOFTWARE, MOVIE DOWNLOADS)?**

Vietnam is not capable at this time to manage this issue. Related agencies still leave this issue open.

**C. IS THE IMPORT OF REFURBISHED COMPUTER HARDWARE, PARTS, AND ACCESSORIES (INCLUDING TONER CARTRIDGES) PERMITTED? IF YES, WHAT ARE THE DOCUMENTATION REQUIREMENTS? IS SPECIAL LABELING REQUIRED? WHAT VALUE SHOULD BE SHOWN ON THE INVOICE? HOW ARE DUTIES AND TAXES ASSESSED?**

The said goods are in the list of goods prohibited to import into Vietnam in the period 2001-2005 issued by the Government of Vietnam. However, this matter is not quite clear in fact in Vietnam. Parts and accessories are not permitted, but sets of refurbished or used computers are imported into Vietnam. Vietnam Customs agrees to import on a case by case basis. In case of permitting to be imported, such goods are subject to 5% import duties and 5% Value Added Tax.

**D. IS THE IMPORT OF USED COMPUTER HARDWARE, PARTS, AND ACCESSORIES PERMITTED? IF YES, WHAT ARE THE DOCUMENTATION REQUIREMENTS? IS SPECIAL LABELING REQUIRED? WHAT VALUE SHOULD BE SHOWN ON THE INVOICE? HOW ARE DUTIES AND TAXES ASSESSED?**

The same as the preceding.

**E. ARE DUTIES AND TAXES ASSESSED ON THE RE-IMPORT OF REPAIRED COMPUTER EQUIPMENT? HOW SHOULD THE COMMERCIAL INVOICE APPEAR?**

Taxes are not levied on sum of value, but levied on added value of the repair contracts (based on repair bills). I.e. Goods imported into Vietnam that have to be brought abroad for repair or maintenance, when being reimported to Vietnam, is exempted from import duties. If there is any added value making usage value increase is subject to pay import duties and VAT with respect to the added value. Commercial invoice indicating the consolidated value and declaration paper on temporary export for repair/maintenance are very important to be basis to define tax rate.

**F. SOME COMPANIES ALLEGE THAT CERTAIN COUNTRIES (SUCH AS GREECE AND SOUTH KOREA, AMONG OTHERS) REQUIRE THAT CROSS-BORDER, ELECTRONICALLY DELIVERED SOFTWARE BE ACCOMPANIED BY A PHYSICAL SHIPMENT. IS THIS TRUE FOR YOUR COUNTRY? IF SO, BY WHAT GOVERNMENT AGENCY (PLEASE GIVE CONTACT INFORMATION), AND HOW IS THIS ACTIVITY ENFORCED (PLEASE SPECIFY THE NAME OF THE APPROPRIATE LAW OR REGULATION)?**

This issue is still out of control of Vietnam's management capabilities in this industry.

(ORIGIN: 6430/ITA/ITI/OITEC/DKRIZ)

REGARDS. BURGHARDT